

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-CV-01858-EWN-MJW

SEAN HARRINGTON,

Plaintiff,

v.

MADELINE WILSON and the "LAW OFFICE OF MADELINE WILSON";  
CHRISTY RYAN;  
BILL J. FYFE and COLUMBINE COUNSELING CENTER, P.C.;  
LAURA ARCILISE, in her personal capacity;  
LOUISE CULBERTSON-SMITH, in her personal capacity;  
JOHN GLEASON (in his personal capacity and his official capacity as  
Attorney Regulation Counsel);  
WENDELL PRYOR in his official capacity as Director of the Colorado Civil Rights Division &  
Colorado Civil Rights Commission;  
ROBERT EVANS, in his official capacity as ADA Coordinator and Court Administrator for the  
First Judicial District;  
the JEFFERSON COUNTY COMBINED COURT, through the COLORADO ATTORNEY  
GENERAL, JOHN SUTHERS (in his official capacity)

Defendants.

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**RESPONSE TO PLAINTIFF'S EMERGENCY FORTHWITH MOTION FOR  
PRELIMINARY INJUNCTION AND FOR SANCTIONS**

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Defendant Madeline Wilson, and the Law Office of Madeline Wilson (collectively, "Wilson"), through her attorney, Brett N. Huff, of the law firm of White and Steele, P.C., hereby responds to Plaintiff's Emergency Forthwith Motion for Preliminary Injunction and For Sanctions ("Plaintiff's Motion") as follows:

**INTRODUCTION AND PERTINENT FACTUAL BACKGROUND**

Wilson represented plaintiff's ex-wife in a bitterly contested divorce and custody dispute that began in 1999. In one of the hearings associated with the divorce case, plaintiff became so

upset and violent that he had to be removed from the court room in restraints. His conduct in and out of court was such that the court even commented that he was "exceedingly erratic, unpredictable, angry, and out-of control." (See **Exhibit G** to Motion to Dismiss Plaintiff's First Amended Complaint, Docket No. 38.)

During the divorce case and since then, plaintiff has engaged in a pattern of threats, harassment and terrorism against Wilson that has placed her in great fear for her and her children's lives and safety. As any reasonable person, when scared by multiple threats of bodily harm and death, Wilson obtained a restraining order against plaintiff; however, it was dismissed when a stipulated no contact order was entered into by plaintiff. Since then, plaintiff has repeatedly violated the no contact order, continued his campaign of terror upon Wilson, and has threatened, *inter alia*, to dedicate his life to making her "taste defeat."

A brief recitation of just some of the plaintiff's conduct toward Wilson is as follows:

1. On February 16, 2000, plaintiff wrote a letter to Wilson stating that

I will never again give any of you warning of my intentions, as though I was a robber planning a heist on a bank and calling the cops in advance, which makes the notice of safety a moot point. I hate all of you too much to give you such an advantage, and I only wish, that, if I ever followed through with it, that I could be around to enjoy the result of my action. . . .

Shortly thereafter, Magistrate Norton's clerk, who was contacted by plaintiff's former counsel, called Wilson and told her the plaintiff was going to kill her and to get to the courthouse immediately and obtain a restraining order.

2. In an undated letter, plaintiff informed Wilson that "I will be the smug, complacent one laughing and mocking your pain...."

3. On June 3, 2000, plaintiff threatened Wilson that next time he would not fail, because he "will use a firearm or some other sure method."

4. In a nine page letter dated June 5, 2000 that plaintiff sent to Wilson, he writes

I hope that you, Madeline, get some sort of brain tumor like your mother had – except that you don't have such a fortuitous end result. . . unless you forgot, you stupid fuck, you recommended, arranged, and implemented a restraining order so that I can't communicate with your cold-hearted, ugly, hairy client with an ass as broad as yours... [you] femi-nazi pieces of shit.

5. On June 19, 2000, an incident report was taken by the Westminster Police Department in which plaintiff told a police officer that before there was no reason for anyone to have a restraining order against him, but now he was getting angry and "they [Wilson and Ryan] have a reason to worry."

6. On July 2, 2000, plaintiff sent a letter to Wilson in which he stated,

I will disappear for several days into the mountains, fasting on water only, as part of a vision quest. This battle must be fought on different grounds, grounds which I am completely unfamiliar. Please be on notice that, if either of you have been a willing party to a battle of spirits and principalities, that I am now a player... the only way your [sic] going to get bleed from me is to find me dead with it drained in to a pool in the bathtub... Madeline is right. I have no respect for this court or its orders...

7. On July 5, 2000, plaintiff left a voice mail with Wilson stating that

I am going to tell you Madeline that you don't want to fuck with me. You are really treading on thin ice and I am the last mother-fucker on earth that you want to keep pushing buttons with. You already know how extreme I am and you know how far that I will go and I am the most extreme son-of-a-bitch you have ever dealt with before and it is going to get more extreme. So you better quit fucking pushing my buttons because this Court and no one else is going to be able to help you.

8. On January 28, 2005, plaintiff wrote a letter to Wilson stating that he knows where she lives.

9. On June 9, 2005, plaintiff was somehow able to obtain Wilson's client list, as well as a list of opposing party and counsel. Attempting to smear her reputation and interfere with her practice, plaintiff then sent postcards to them stating,

I am gathering information for both a lawsuit and a petition to the Colorado Attorney Regulation Counsel regarding [Madeline Wilson]. If you believe that you have been prejudiced by what you believe may have been ethical or procedural violations, irrespective of whether you were represented by or opposed by Ms. Wilson, and you wish to contribute information, please forward that information to me.

Plaintiff goes on to say that a website is forthcoming with key word "Madeline Wilson" and "Colorado" and "Harrington".

10. On that same day, June 9, 2005, plaintiff called Wilson four times: 8:19 p.m.; 8:32 p.m.; 8:33 p.m.; and 8:48 p.m. He screamed into the telephone on each call "SEAN HARRINGTON CALLING FOR SHELBY HARRINGTON."

11. On July 3, 2003, plaintiff called Wilson and left multiple threatening voice mails threatening to "get [her]." Wilson contacted the Glendale Police Department and when the police arrived at her office, the police officer, recognizing Wilson and Mr. Harrington's past conduct of threats, asked "is it him again?"

12. On July 20, 2005, plaintiff wrote to Wilson in which he mentioned her children's initials and asked if she could imagine if they were "subjected to. . . pain, grief and loss."

13. Plaintiff moved out of the State of Colorado, which has eased the constant fear that Wilson had been living with for some time. However, plaintiff has repeatedly filed complaints with the Colorado Regulations Counsel, all of which have been investigated and dismissed. He has now filed this lawsuit.

14. When Wilson learned that plaintiff was going to be in Denver on December 7, 2005 for a Scheduling Conference, she was fearful that he might carry out his threats of violence against her. Wilson legally petitioned the District Court in and for Denver, County Colorado for a restraining order against Harrington, to help ensure her safety. The court granted her petition and entered a restraining order against Harrington. Attached as **Exhibit A**, is a copy of this Restraining Order, issued by Magistrate Judge Claudia Jordan. Harrington now claims that Wilson is abusing the legal process by seeking the restraining order. Wilson had no intentions of impropriety with obtaining the restraining order, and in light of plaintiff's history with Wilson, her actions were reasonable, legal and not an abuse of the process.

15. Plaintiff has now asserted yet another complaint with the Attorney Regulation Counsel in Colorado. **Exhibit B**.

16. This Court has stayed disclosure, discovery and motion practice pending determination of the pending dispositive motions filed by the defendant. However, this has not stopped Harrington from his attempts to threaten, harass and increase Wilson's litigation costs. Plaintiff is now threatening to sue Wilson in Texas, on the same or similar basis on which he is asserting in this case. **Exhibit C**. He also has filed yet another grievance against Wilson with the Texas State Bar. Id.

17. Plaintiff also prepared and filed an Emergency Forthwith Motion for Preliminary Injunction and for Sanctions, insisting that Wilson's conduct in obtaining the restraining order was "vexatious, frivolous and duplicative," "outrageous," "retaliatory" and "abusing the proceedings of this tribunal to further her own vendettas of harassment." Moreover, plaintiff

requests that Wilson be sanctioned and that her attorney, the undersigned, also be sanctioned if he was aware or facilitated this undertaking. (Plaintiff's Motion, ¶¶ 2, 4, 10.)

18. Wilson obtained the restraining order on reasonable, legitimate, and legal grounds and for no other purpose other than to ensure her own safety. She did not appear at the Scheduling Conference as she petrified that plaintiff will do her bodily injury and she will have plaintiff served with the restraining order at or during the Scheduling Conference. She is reserving service upon him if he comes to her office, as he has on past occasions.

### LEGAL DISCUSSION

Plaintiff's Motion should be denied because it is not only a frivolous and a vexatious attempt to harass and increase Wilson's legal costs, but the Court is without jurisdiction to determine the issues raised by plaintiff pursuant to the Rooker-Feldman doctrine.

#### **Plaintiff's Motion is Barred under the Rooker-Feldman Doctrine**

The Rooker-Feldman doctrine bars "a party losing in state court ... from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." Johnson v. De Grandy, 512 U.S. 997, 1005-06, 129 L. Ed. 2d 775, 114 S. Ct. 2647 (1994). As a rule, federal review of state court judgments can be obtained only in the United States Supreme Court. Feldman, 460 U.S. at 476 (citing 28 U.S.C. § 1257; Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 296, 26 L. Ed. 2d 234, 90 S. Ct. 1739 (1970)); see also Rooker, 263 U.S. at 415-16. Generally, a federal district court cannot review matters actually decided by a state court, Rooker, 263 U.S. at 415, nor can it issue "any declaratory relief that is 'inextricably intertwined' with the state court judgment." Facio v. Jones, 929 F.2d 541,

543 (10th Cir. 1991) (quoting *Feldman*, 460 U.S. at 483-84 n.16 (extending doctrine to issues not actually decided by the state court)).

In this case, Wilson obtained a restraining order against plaintiff in Colorado state court. Plaintiff seeks to collaterally attack the state court's restraining order against plaintiff, which is not permissible pursuant to the Rooker-Feldman doctrine. Plaintiff's proper remedy is through the state court appellate process and then to the United States Supreme Court; however, this Court should not have jurisdiction to review the state court's order.

Plaintiff claims that Wilson is abusing the judicial process; however, just the opposite is true, as plaintiff not only abuses the judicial system, but he thumbs his nose at this Court's orders. This Court entered an order staying disclosure, discovery and motion practice pending the determination of pending dispositive motions. (Minute Order, Dated December 8, 2005, Docket No. 58.) Notwithstanding this Court's Order, plaintiff continues harassing Wilson with his spiteful litigiousness and threatens to sue Wilson in a Texas lawsuit. Presumably, he believes that he can continue with his vexatious litigation in another forum.

Pursuant to C.R.S. § 13-17-102(4),

The court shall assess attorney fees if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure or a designation by a defending party under section 13-21-111.5 (3) that lacked substantial justification. As used in this article, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

C.R.S. § 13-17-102(4) (Lexis 2005). A "vexatious" claim is one brought or maintained in bad faith to annoy or harass and may include conduct that is arbitrary, abusive, stubbornly litigious or disrespectful of truth. Bockar v. Patterson, 899 P.2d 233 (Colo. App. 1994).

Applying the law to this case, Wilson was within her legal rights to petition for a restraining order and the Denver District Court was within its authority to issue a restraining order. There can be no doubt that based on Wilson's history with plaintiff, she had more than good cause to seek protection with the courts. Moreover, the law clearly precludes plaintiff from seeking relief from the restraining order with this Court. Plaintiff's conduct and Plaintiff's Motion is without a doubt vexatious.

Accordingly, Wilson requests the Court to deny Plaintiff's Motion and to award her reasonable costs and attorney fees for defending the same as vexatious.

Dated this 21<sup>st</sup> day of December, 2005.

Respectfully submitted,

s/Brett N. Huff  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 21, 2005, a true and correct copy of the foregoing was electronically filed via CM/ECF, sending notification of such filing to the following:

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